

Nos. 80 and 84.) According to the judgment and certified court transcript, Kohse admitted to violating his supervised release by failing to refrain from using a controlled substance. (Dkt Nos. 82 and 84.) For his violation, Judge Wilken revoked Khose's supervised release and sentenced him to three months of custody and seven months of supervised release, with the additional condition that he participate in a residential drug treatment program for six months. (Dkt. Nos. 82 and 84.) Judge Wilken agreed to allow Kohse to self-surrender and requested him to report to the U.S. Marshal in Oakland on March 2, 2015 to begin serving his three months. Kohse did not report to the U.S. Marshall until March 16, 2015.

On March 13, 2015, while Kohse was in fugitive status, Magistrate Judge Kandis Westmore signed a criminal complaint in the current case, Case No. CR-15-0179 JD, charging Kohse with a single count of failing to surrender to serve a sentence in violation of 18 U.S.C. § 3146(a)(2). (Dkt. No. 1.) On March 17, 2015, after Kohse's self-surrender, Magistrate Judge Westmore ordered Kohse's pre-trial detention. (Dkt. No. 4.) On March 26, 2015, the Grand Jury returned a single count Indictment alleging the same violation. (Dkt. No. 4.) Kohse was arraigned on the Indictment on March 31, 2015. Trial is set to begin on November 9, 2015 at 9:00 a.m. Kohse has remained in continuous custody pending trial.

B. REQUEST FOR IMMEDIATE RELEASE ORDER

On September 18, 2015, while preparing the case for trial, the United States discovered additional evidence that was material to the defense. The United States immediately disclosed the evidence to the defense and thereafter moved to dismiss the Indictment, and to vacate the trial date and all pretrial deadlines. The United States further requested this Court to place the matter on the Oakland duty magistrate calendar for status regarding detention in the remaining Form 12 case. In furtherance of these requests, the United States placed calls to the Courtroom Deputies for this Court and the Oakland duty magistrate.

On September 21, 2015, the United States confirmed with the assigned United States Probation Office ("USPO") that there was no longer a basis to hold Kohse on the Form 12 case. The USPO confirmed that Kohse had served the three-month custodial sentence imposed by Judge Wilken and, therefore, as to the Form 12 case, he should be released from custody so that he may report to residential drug treatment at the direction of his USPO. Accordingly, the current Indictment forms the exclusive

basis for Kohse's current detention.

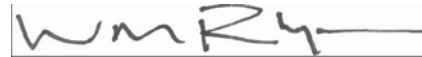
C. CONCLUSION

For these reasons, the United States respectfully requests the Court to dismiss the Indictment, to vacate the November 9, 2015, trial date and all pre-trial deadlines, and to order Kohse's immediate release from custody. If the Court is unwilling to dismiss the Indictment without a hearing, the government would respectfully request that the Court place the matter on calendar as soon as practicable but, to avoid any prejudice to the defendant, to order his release forthwith.

DATED: September 21, 2015

Respectfully submitted,

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Acting United States Attorney




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Assistant United States Attorney

ORDER

Leave is granted to the United States to dismiss the Indictment against Defendant Ernst Wilhelm Kohse. It is further ordered that all the trial date and pre-trial deadlines in this case are vacated. Kohse is hereby ordered to be released from custody and the United States is ordered to provide a copy of this order to the U.S. Marshals Service.

Date: September 22, 2015


JAMES DONATO
United States District Judge